

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

CHEMTURA CORPORATION

Employer

and

Case 6-RC-12511

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Chemtura Corporation, is engaged in the manufacturing and nonretail sale of specialty chemicals used primarily in various types of plastics, at its Morgantown, West Virginia facility, the sole facility involved herein, where it currently employs approximately 129 employees. The Petitioner, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all regular full-time and regular part-time employees¹ employed by the Employer at its Morgantown, West Virginia facility; excluding the drafting specialist, the production coordinator, the office clerical employees, including the purchasing coordinator,

¹ In its brief the Petitioner states that the unit description was amended at the hearing. During the hearing, although the parties stipulated that production technicians, maintenance technicians, PMHA Technicians, PASC Technicians, E & I Technicians, warehouse technicians, laboratory technicians, senior laboratory technicians, chemical assistants and environmental technicians are properly included in the unit herein found appropriate, the unit was never amended to specifically include these job classifications which are not in dispute, and accordingly, no such amendment was received into the record. The parties also stipulated that office clerical employees, administrative assistants, human resources specialists, guards, professional employees and supervisors are properly excluded from any unit found appropriate. As developed at the hearing and as stated on page 27 of its brief, it is clear that the unit sought by the Petitioner includes all full-time and regular part-time production and maintenance employees.

buyers assistant,² IA Technicians (process control), administrative assistants, customer service representatives (material control specialist, transportation services coordinator, materials control coordinator and production services coordinator), and human resources specialist; mechanical engineering assistants, operational engineering assistants and guards, professional and technical employees and supervisors as defined in the Act.³

At the hearing and in their briefs⁴ the parties disagree on whether the operational engineering assistants (“OEAs”) and the mechanical engineering assistants (“MEAs”) should be excluded from the unit. The Petitioner, contrary to the Employer, contends that the OEAs and the MEAs must be excluded from any unit found appropriate because they are statutory supervisors. However, the Petitioner concedes that if the OEAs and the MEAs are not supervisory employees, they share a community of interest with and should be included in the petitioned-for unit.

The parties also disagree as to the unit placement of the production services coordinator, material control specialist, transportation services coordinator, purchasing coordinator, assistant buyer, drafting specialist and the two IA technicians. The Petitioner contends that the individuals in these job classifications are office clerical and/or technical⁵ employees who do not share a community of interest with the petitioned-for employees. The

² The terms buyer’s assistant and assistant buyer are used interchangeably.

³ The petition filed by the Petitioner seeks to exclude the “production coordinator” and refers to the classifications of material control specialist, transportation services coordinator and purchasing coordinator as “customer service representatives.” There is no indication in the record that a position entitled production coordinator exists or that the Employer classifies any employees as customer service representatives.

⁴ Both parties filed timely briefs in this matter which have been duly considered by the undersigned.

⁵ On page 27 of its brief, the Petitioner, apparently inadvertently, refers to the disputed classifications as being “office clerical and/or professional employees.” It is clear both from the record and from its brief that the Petitioner is taking the position that the classifications at issue are office clerical and/or technical, and I shall address those issues herein. Moreover, I note that in the instant case, it is readily apparent that none of the employees in dispute meet the requirements of Section 2(12) of the Act by consistently exercising discretion and judgment in the performance of their duties and possessing the advanced type of knowledge necessary to make such judgments. In this regard, I note that none of the disputed positions has any particular educational or skill requirement.

Employer, contrary to the Petitioner, contends that these individuals must be included in any unit found appropriate herein based on their community of interest with the employees in the petitioned-for unit. There is no history of collective bargaining in the petitioned-for unit. The Petitioner has indicated that it is willing to proceed to an election in any unit found appropriate herein.

I have considered the evidence and the arguments presented by the parties as to the unit placement and supervisory issues. I have concluded, as discussed below, that the Petitioner has not met its burden of establishing that the OEAs and MEAs are statutory supervisors. I have further concluded that the purchasing coordinator, the assistant buyer and the draftsman do not share a community of interest with the petitioned-for employees which is sufficient to require their inclusion in the unit. With respect to the IA technicians, and the materials control coordinator, transportation services coordinator and product services coordinator, I have concluded that they must be included in the unit as they have substantial and regular interaction with the employees in the unit petitioned for herein. Accordingly, I have directed an election in a unit of approximately 126 employees, including the MEAs, OEAs, the two IA technicians, the materials control coordinator, the transportation services coordinator and the production services coordinator.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that support my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

In 2003, the Employer acquired the Morgantown facility, which had been operated since 1988 by GE Specialty Chemicals, Inc. The Employer operates specialty chemical plants which manufacture liquid and solid chemicals, the majority of which are used by plastics companies. The Employer's production process involves generating chemical reactions on various raw materials to create the desired product. Solely involved herein is the Morgantown, West Virginia facility. The Morgantown facility consists of a North plant and a South plant which are

separated by a distance of approximately one mile. Production operations are carried on in five buildings at the North plant and one building at the South plant. The Employer's production areas operate 24 hours per day, seven days per week.

The North plant covers approximately 60 acres. In addition to the five production buildings, the Employer's Administration building, Facilities building, Tech Center, pilot plant⁶ and two warehouses are located at the North plant. The production areas are referred to as the K-9 area, the PMHA area and the 181/183/74 area.⁷

At the South plant, the production area is located in the S-11 building. In this area plasticizers are manufactured.⁸ Also located at the South plant are an E and I shop,⁹ warehouse, and tank truck, railcar and truck loading and unloading areas.

The overall operations of the Employer are the responsibility of Site Manager Keif Hess. Reporting to Hess are Solids Manager Steve Suek and Liquids Manager Bill Hayes. Seven team leaders report directly or indirectly to Hess.¹⁰

Although different products are made in each production area, and each area's reactors are unique, the production process does not vary substantially from area to area. Production technicians unload raw materials and will charge them into chemical reactors, or "kettles".

When the process is complete the product is pumped out to the finished storage area. During

⁶ The pilot plant is where research and development is performed. The record indicates that the pilot plant is not operating at the present time.

⁷ 181, 183 and 174 are separate buildings at the North plant. The record reveals that building 174 is commonly referred to as 74. The Employer considers the operations in 181, 183 and 74 to be one production area. In the 181/183/74 area, liquid chemicals are manufactured. In the K-9 area, liquids and solids are mixed to produce flakes and powders. In the process materials handling area or PMHA, flakes and powders are converted to package units, such as pellets.

⁸ Plasticizers are utilized in such products as telephone shells, hard hats, dashboards, bumpers and oil products.

⁹ E and I refers to Electrical and Instrumentation.

¹⁰ At the hearing, the parties stipulated, and I find, that Site Manager Keif Hess, Solids Manager Steve Suek, Liquids Manager Bill Hayes, and the seven team leaders are supervisors within the meaning of Section 2(11) of the Act based on their authority to hire, fire and responsibly direct employees and their authority to effectively recommend the hire, fire and discipline of employees.

the shift, the duties of the production employees include loading and unloading trucks, taking readings and performing environmental inspection and “drumming.”¹¹ The Employer controls and monitors the process through intelligent automation (“IA”). Production technicians all take turns monitoring the IA screens from the control room located in each of the production areas.¹²

North plant liquids team leader Martin Thorn oversees the 24 production technicians working in the 181/183/74 production areas. Working with Thorn is OEA John I. Clawges. Solids team leader Mike Sirockman oversees the approximately 16 production technicians working in the K-9 area and the 18 PMHA technicians working in the PMHA production area. The temporary OEA in the PMHA area is Harry Areford. In the K-9 area the OEA is Debbie Foley.¹³ South plant liquids team leader Wendell “J.R.” O’Hearn oversees OEA Joe Swihart and approximately 12 production technicians working at the S-11 production area. Maintenance team leader Lynn Unger oversees the nine employees who work as E and I technicians and the 16 employees classified as mechanical maintenance technicians.¹⁴

Assisting Unger with the work of the maintenance technicians are the three MEAs. Like the OEAs, the MEAs are assigned to particular production areas. MEA Bruce Trickett works in the 181/183/74 area. Dave McDilda works in the K-9 and PMHA areas and Blaine Bolyard works at the South plant.

The four lab technicians, three senior lab technicians and three chemical assistants, all of whom work at the Tech center at the North plant, report to team leader Chip White. Yost, Ringer and Romito, the employees currently employed in the disputed job classifications of

¹¹ It appears that drumming involves storing the product in drums.

¹² As will be described herein, the two IA technicians also monitor IA screens from their offices in the Facilities building.

¹³ The K-9 and PMHA buildings appear to be connected by a hallway.

¹⁴ E and I technicians work throughout the North plant. They work on the hardware components of the facility’s production mechanisms, such as high level probes, pressure transmitters and wiring. The mechanical maintenance technicians work on pipe, valving and pumps, and are assigned to one of the four production areas, the administration building, the warehouse or the boiler house.

material control specialist, production services coordinator and transportation services coordinator, respectively, also report to White.

Four warehouse technicians report to Team Leader Dave Lofstead. The warehouse technicians unload raw materials in drums, store and/or deliver the materials to the production areas and load box trailers with finished product.

Team leader John Snodgrass oversees the IA system which generates readings from the Employer's field instruments in the production process. The IA software calculations allow the Employer to maintain the production equipment in safe working order. Reporting to Snodgrass are Drafting Specialist Bob Baker and the two IA technicians, Process Control Coordinator Dennis Nelson and Process Control Technician Russ Smith. These employees have offices on the second floor of the Facilities building which is located next to the 183 and 181 buildings. The PASC technician,¹⁵ whose eligibility is not in dispute, works in Site Technology and reports to Tech Service Engineer Hayda Zahalka.

Production, maintenance, PMHA, warehouse technicians and the PASC technician wear uniforms, as well as hard hats, safety glasses and steel-toed shoes. The OEAs and MEAs also wear uniforms and safety gear. Employees who work in the Tech Center, specifically the chemical assistant, senior lab technicians and lab technicians, wear business casual clothing with a lab coat. The employees working in the Administration or the Facilities buildings work primarily in an office area,¹⁶ wear business casual clothing to work and wear safety equipment only when they enter the plant.

¹⁵ According to the record, PASC refers to polymers additives solution center.

¹⁶ This group is comprised of Drafting Specialist Bob Baker, IA Technicians Dennis Nelson and Russell Smith, Material Control Specialist David Yost, Production Services Coordinator Kay Ringer, Transportation Services Coordinator Jan Romito, Purchasing Coordinator Cheryl Gay Dean and Assistant Buyer Linda McCartney.

It appears that all of the employees in the disputed classifications, as well as those which are not in dispute, are hourly paid,¹⁷ enjoy corporate-wide benefits and are subject to the same personnel policies. All employees record their time for payroll purposes.

The hours of work of the Employer's hourly paid employees differ according to their job classifications. The production, mechanical maintenance, lab and PMHA technicians and three of the nine E and I technicians work 12-hour rotating shifts.¹⁸ On this schedule, each grouping of employees works on dayshift for approximately 5 shifts per month. These employees are paid for time spent having lunch, but they do not have an assigned lunch period. Rather, they eat "as able" during the work day and cannot leave the facility. The OEAs and MEAs work from 7:00 a.m. to 5:30 p.m. on Mondays through Thursdays.¹⁹ These individuals have a one-half hour unpaid lunch during which they are permitted to leave the facility.

The chemical assistants, senior lab technicians, warehouse technicians and six of the E and I technicians work on weekdays. Employees in these positions have a one-half hour unpaid lunch during which they too may leave the facility.

The eight positions which the Union contends are office clerical or technical all work on dayshift on weekdays.²⁰ Depending on the position, there is a one-half to one hour unpaid lunch during which the employees may leave the facility.

The North plant has several lunchrooms. One of the lunchrooms is located on the lower floor of the Facilities building. This lunchroom is utilized by employees working in that building.

¹⁷ E and I technicians and the mechanical maintenance technicians are paid \$26.66 per hour. Production technicians are paid \$25.09 per hour. PMHA technicians are paid \$24.72 per hour. OEAs and MEAs are paid \$30.11 per hour. Chemical assistants and the PASC technician are paid \$30.37 per hour. The senior lab technician and lab technician are paid \$27.19 and \$24.31 per hour, respectively. Warehouse technicians are paid \$23.34 per hour.

¹⁸ Employees are assigned to A, B, C or D shift.

¹⁹ One of the MEAs works every weekday from 7:00 a.m. to 3:30 p.m. One of the OEAs works every weekday from 6:30 a.m. to 3:00 p.m.

²⁰ The starting times for these positions are between 7:00 and 8:15 a.m. The ending times for these positions are from 3:30 to 5:15 p.m.

There are additional break and lunchrooms in the 183, K-9, 175,²¹ Warehouse No. 3 and in the Tech Center buildings. The record indicates that employees working in the 183/181/74 production area eat lunch in the 183 building. The employees working in the K-9 building generally eat lunch in that building. The lab technicians, the chemical assistants and the warehouse technicians tend to eat in the Tech Center and Warehouse No. 3, respectively. The mechanical maintenance technicians tend to eat lunch in Building 175. There are three shower facilities at the North plant which are located in the Facilities building, the Tech Center and in the maintenance change room in Building 175. At the South plant there is a shower/lunchroom near the plant entrance and a lunchroom in the maintenance area.

Most of the employees working at the North plant park in the employee parking area which is located between the Tech Center and the Administration building. Some employees prefer to park in the visitor parking area located in front of the PASC building, a building located on the other side of the Tech Center. It appears from the record that there is no restriction on employees parking in the visitor parking area.²² Employees working at the South plant can park in one of three areas.

II. SUPERVISORY ISSUES

The Petitioner, contrary to the Employer, asserts that the OEAs and the MEAs should be excluded from the unit found appropriate herein because they are statutory supervisors. However, the Petitioner acknowledges that if these individuals are not found to be supervisors within the meaning of the Act, they would be properly included in the unit petitioned for herein.

Before examining the specific duties and authorities of the MEAs and OEAs, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as:

²¹ Building 175 is the designated maintenance building.

²² The record does not reflect which employees prefer to park here as opposed to the employee parking lot.

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB 1409 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, at 1409. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., Fred Meyer Alaska, 334 NLRB 646, 649, fn. 8 (2001); Pepsi-Cola Co., 327 NLRB 1062, 1064 (1999). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See Michigan Masonic Home, supra, at 1410; Chevron U.S.A., 309 NLRB 59, 61 (1992). The Board and the Courts have recognized that an employee does not become a supervisor merely because he has greater skills and job responsibilities than

fellow employees or because he gives some instructions or minor orders. Byers Engineering Corp., 324 NLRB 740 (1997); Chicago Metallic Corp., 273 NLRB 1677 (1985).

With regard to whether the OEAs and MEAs possess any of the 12 indicia of supervisory status listed in Section 2(11) of the Act, it is noted that the Petitioner does not contend nor is there any record evidence to establish that these individuals transfer, suspend, lay off, recall, promote, reward²³ or adjust grievances. In its brief, the Petitioner asserts that MEAs and OEAs “possess the same authorities” as team leaders, who the parties stipulated were supervisors within the meaning of the Act based on their “authority to hire, fire, responsibly direct and to effectively recommend the hiring, firing and discipline of employees.” The Petitioner further argues in its brief that OEAs and MEAs have the authority to assign employees.

Initially, I note that there is no evidence in the record to support a finding that OEAs or MEAs participate in or have any authority regarding the hiring or firing of employees. Likewise, the record contains no evidence that OEAs or MEAs effectively recommend such actions. Accordingly, I will address only the Petitioner’s arguments that OEAs and MEAs are supervisory employees because they recommend discipline, and assign and responsibly direct employees.

A. OEAs

As noted, team leaders and the OEAs both work only during dayshift on weekdays whereas production technicians work 12-hour rotating shifts. Because of the shift rotation and the need to staff the plant around the clock, each production technician works on the dayshift on weekdays about five to seven shifts per month.

Based on the record, it appears that the production technicians working on each shift in each of the production areas are assigned to perform one function on each shift that they work.

²³ Production Technician Richard Perry testified that on one occasion an OEA gave him “a pat on the back” by leaving a note in the logbook stating, “Good job last night.” Although the Petitioner elicited this testimony, it does not appear to argue that this constitutes the authority to reward employees. In any event, this isolated comment does not establish that OEAs or MEAs have the authority to reward any employees.

In all of the production areas, the production technicians have collectively decided upon a system for rotating the work to be performed on the shift. For instance, in the 181/183/74 production area, production technicians are assigned to one of four or five jobs. Several of the jobs involve working as a kettle operator; one involves monitoring the IA screens and one technician works as the utility employee performing drumming. In the K-9 area, four production technicians are scheduled on each shift and are assigned to operate the dryer, the bird filter or to operate the kettles.²⁴

In assigning production work, the Employer utilizes a production schedule, a logbook and an end-of-shift status form.²⁵ The production schedule is created by material control specialist David Yost. The log book records any changes to the production schedule as well as any special instructions for a particular position on the shift. The OEA usually is the individual who records such information in the logbook. The record reveals, however, that in the 181/183/74 production area individuals other than OEA John Clawges have recorded entries in the logbook. In addition, production technicians frequently record the completion of jobs in the left margin of the logbook. On the night and weekend shifts the logbook is the means by which employees find out what work they are expected to complete.

In the PMHA area, production technicians consult the finishing manpower priority schedule list. The record establishes that this list was instituted by Solids Manager Suek when he was a team leader. OEA Areford updates this list and submits it for approval to his team leader and Suek, who make the final determination over that area's priorities.

At times, production on one of the kettles may be shut down. The record indicates that the decision to shut down the production on a kettle is not made by the OEA; rather, higher

²⁴ The nature of the bird filter is undisclosed.

²⁵ The end-of-shift status form lists all of the kettles in operation and the status of production at the end of each shift. This document is used as a method of communication between shifts.

management makes this determination. Likewise, the duration of preventative maintenance shutdowns is not set by an OEA. Again, higher management sets the duration of any shutdown.

OEA's Clawges, Foley and Areford²⁶ attend a "stand-up meeting" at 8 a.m. every day, at which production for the prior day is summarized and any problems with the process are discussed. Production and maintenance technicians generally do not attend these meetings.

In case of call-offs, employees call either their team leader, an OEA or the control room. During the off-shifts, employees will leave a voice-mail message for either the team leader or the OEA and will also contact a fellow employee at the facility. Frequently, call-offs trigger the need to call out an off duty employee. The record establishes that the Employer has a call-out procedure whereby off duty employees are called first in seniority order to work overtime. However, no employee can be mandated to work overtime. If neither the team leader nor the OEA is present, a production technician will make calls to employees utilizing the call-out list.²⁷

Despite the testimony that a number of production technicians believe that OEAs can independently authorize overtime, the record establishes that overtime must be authorized by the team leader. It appears that each area utilizes a fixed number of employees on each shift. For instance, in the South plant production area, three production technicians are scheduled for each shift. Only team leader O'Hearn, who oversees the production at the South plant, can decide to utilize four employees on any shift. The record also reveals that management has determined that the South plant production area can operate with two employees. If only two employees were scheduled and one called off, the OEA in the area is authorized to call in another employee because it is unsafe to operate with less than two employees. Thus, in this limited situation OEA Swihart has been given authorization to call out employees without

²⁶ OEA Swihart may also attend the stand-up meeting inasmuch as the record indicates that Swihart leaves the South plant daily to attend meetings.

²⁷ In the PMHA, Solids Manager Suek or Team Leader Sirockman handle overtime call-outs. Areford is not involved in this activity.

checking with the team leader. According to Team Leader O'Hearn, in other situations Swihart has never called out employees to work without authorization.²⁸

One of the production technicians at the North plant testified that Clawges can assign himself overtime. However, the record indicates that Clawges has worked overtime only when he is unable to find an employee willing to work.

There is evidence in the record that employees believe they are required to follow OEA directives and that they will face consequences if they refuse to do so.²⁹ It is undisputed that employees have never been told by team leaders or by higher management that the OEAs are supervisors.³⁰ However, various team leaders have told their employees that they are to follow the directives of the OEA.

In connection with his oversight of the work, the record establishes that in July 2004 OEA Clawges sent an e-mail message to the employees in the 181/183/74 area with a carbon copy to higher management setting forth Clawges' expectations for the area.³¹ Clawges sent the e-mail because his expectations were not being met.³² Within an hour the temporary team leader of the area sent an e-mail to the same group informing them that he agreed with Clawges' expectations.

²⁸ Production Technician Everett Dwayne Wright testified to one example when Swihart appeared to assign overtime without authorization from higher management. This incident occurred two to three weeks prior to the hearing, when O'Hearn was off because of the birth of his child.

²⁹ Production Technician Richard Perry testified that he "assumes" he must follow OEA Clawges' directives because Clawges records the entries in the logbook which define Perry's work.

³⁰ The record indicates that upon being promoted to OEA, Debbie Foley told coworkers that she would run jobs and that she felt she was a representative of management.

³¹ The list of expectations contained 21 items relating to recording information, communication and housekeeping matters. For example, Clawges listed the following expectations: "Read the logbook at the beginning of each shift;" "The logbook is written as a guide for work that needs to be done. An honest effort is what I expect ...;" "When time allows help others in your area, 181, 183, 74 complete their tasks;" "Complete fork truck inspection each shift;" "Good housekeeping is everyone's job;" "Record all delay times on your back sheets, next batch starts after previous batch is finished pumping out. Start delays if unable to immediately start charging the next batch;" and "always operate in a safe manner. If you don't think it's safe, STOP and we'll make it safe."

³² The record reflects that no employee was disciplined as a result of not meeting Clawges' expectations.

On January 31, 2006, Clawges sent another e-mail to the employees working in the area. The e-mail outlines the expected schedule for installing a new reactor in the 181 building and which kettles would be operating during that time. In addition, Clawges informed the group that his review of the batch sheets revealed unaccounted for downtime. Clawges advised the employees that all time between batches must be accounted for and warned that technicians could be held responsible for unaccounted down time on units. Team Leader Martin Thorn, who was not the team leader when Clawges sent previous e-mails, sent a message to the same group about two hours later apparently disavowing Clawges' statements.³³ The next day Thorn personally advised Clawges that Clawges could not send such e-mails in the future without Thorn's authorization.

With respect to the contention that OEAs have some role in the disciplinary process, the record establishes that discipline is issued by the team leaders and that OEAs can report incidents to the same extent as any other employee. The record reflects that on one occasion OEA Swihart stayed at the facility to question an employee about some unfinished work. There is no indication that this incident was memorialized in any way, or that it led to further action. The record also shows that, after hearing reports or conferring with an OEA,³⁴ team leaders consult with the area manager or the Employer's human resources office to determine whether disciplinary action should be taken.

The record indicates that OEAs perform between one-quarter to a few hours of hands-on production work each day, and that they spend between 20 to 80 percent of their time on the production floor performing troubleshooting and working with maintenance to keep the process

³³ Thorn's e-mail was not offered into the record.

³⁴ At times, team leaders and managers question OEAs after reviewing production records. For instance, in the PMHA area, Manager Suek reviews the logbook to monitor the progress of the production technicians. Suek also reviews the computerized information from the digital equipment in the K-9 area. If Suek believes that a particular product is being produced too slowly, he will question OEA Areford for factual information and will then communicate directly with the operator involved.

running. The balance of their time is spent in their offices.³⁵ If production problems arise while the OEA is not present, he or she can be reached by a cell phone or beeper.

The record contains a job posting vacancy notice dated July 12, 2005, for an OEA position in the K-9 area. The position description states, among other things, that the OEA is to foster a team building spirit as an individual contributor with safety as the highest priority, support and demonstrate leadership in site safety programs, coordinate technician assignments and overtime requirements, assist technicians in problem solving and troubleshooting efforts in the plant, lead morning production meetings (maintenance, E and I, Operations, etc.) and work/assist with maintenance to schedule daily activities in the area, backfill for the Team Lead in his/her absence and participate in and/or lead weekly team/safety meetings in the area.³⁶ The job posting indicates that the OEA position is a “non-exempt” position, presumably for Fair Labor Standards Act purposes.

At the South plant S-11 production area, production technicians work either on a continuous operation line or on a batch line. The production technicians there can be assigned to one of three duties each day. Specifically, they are assigned to work as an outside utility person,³⁷ an inside utility person or as an IA operator.³⁸ The employees at the South plant have also worked out an agreed-upon rotation of duties system. These production technicians utilize the production schedule created by Material Control Specialist Yost and the logbook to perform

³⁵ Clawges’ office is in the 175 building. Areford’s office is located in the warehouse and Debbie Foley’s office is in the Administration building.

³⁶ In the 181/183/74 production area, Team Leader Thorn conducts the weekly team meeting. When Thorn is not present at the facility, Clawges conducts the meeting.

³⁷ The outside utility person unloads raw materials from tank trucks and cars and loads trucks with finished product.

³⁸ The inside utility person handles drumming orders, changes the catalyst and disposes of the catalyst when it is used up. The IA operator controls the production process by monitoring the computerized IA screens.

their duties. According to Team Leader O'Hearn, the shipping schedule dictates the products to be produced and OEA Swihart records such information in the logbook.

Swihart performs production work infrequently, but he spends approximately 20 percent of his time on the production floor. Swihart works with the SAP program,³⁹ attends meetings and interacts with any contractors on site. Swihart also completes the Hazardous Energy Control Procedure (HECP) forms which must be completed each time a piece of equipment is to be repaired.⁴⁰ The records establishes that if a production, maintenance or E and I technician completes the form; two signatures are required on the form. One signature suffices if the signer is a team leader, engineer, OEA or MEA.

B. MEAs

The Petitioner contends that the MEAs plan, schedule and assign the maintenance work to the maintenance technicians. All of the MEAs report to Team Leader Lynn Unger. The mechanical maintenance technicians are assigned to work in one of the production areas.⁴¹

The mechanical maintenance technicians work on rotating shifts. On dayshift, maintenance's schedule is determined as in-plant customers⁴² enter requests for maintenance service into the SAP system. At times, employees in the plant simply call for maintenance help over the radio and will input the information into the SAP system at a later time. The MEAs

³⁹ The Employer utilizes a computer program called Systems Administration Process ("SAP") which is a general procedures program. The record indicates that the Employer uses SAP to track the inventory, the spare parts and equipment, to record shipments of products and, within the plant, to request maintenance service.

⁴⁰ Everett Dwayne Wright, a witness called by the Petitioner, testified that Swihart completes the HECP forms more frequently than the production technicians because he has more training in this area.

⁴¹ Maintenance technicians will also work as needed in the Administration building, the warehouse or the boiler room.

⁴² This group includes the production technicians, OEAs and team leaders.

convert each SAP entry into a work order and print out all of the work orders.⁴³ The MEAs then prioritize the work and distribute it to maintenance technicians.⁴⁴

The Employer has maintenance shutdowns between two to six times per year during which MEAs assign work to maintenance technicians. The record establishes that the process during each shutdown is largely the same. While on shutdown, maintenance employees do no work for the in-plant customers.

Maintenance technicians also work as the shift mechanic on off shifts. For nights and weekends, Team Leader Unger prepares a work list for the shift mechanic. However, the shift mechanic understands that if on site work is needed to keep production running, he must stop doing the tasks on the work list.

It appears from the record that the MEAs spend various amounts of time performing maintenance work on dayshift. Depending on which party's estimate is accurate, MEA McDilda spends between 25 to 50 percent of his time performing maintenance work. Both parties agree that MEA Dave Trickett spends about 50 percent of his time performing maintenance work. It also appears that MEA Blaine Bolyard spends between 60 to 70 percent of his time performing maintenance work.

According to the Petitioner, the MEAs track the time of employees and ask employees to work overtime. Certain maintenance technicians believe that the MEA has the authority to change their job assignment during the shift without the authorization of the team leaders. Finally, the Petitioner contends that the MEAs direct the workforce during shutdowns. One of the maintenance technicians called by the Petitioner stated that MEAs determine what work should be performed by a given maintenance technician based on the technician's skill and ability. Inasmuch as the record establishes that nearly all of the maintenance technicians can

⁴³ The MEAs have an office in the 175 building where they review, print and prioritize work orders.

⁴⁴ It appears that maintenance technicians are able to print a copy of the work orders themselves, but some choose not to do so.

independently perform 85 to 90 percent of the maintenance duties at the facility, it does not appear that the MEAs must utilize a great deal of judgment in assigning tasks.

The record indicates that Team Leader Unger has advised maintenance technicians that they are to follow the MEAs instructions and, if a conflict occurs and is unresolved between the MEA and the maintenance technician, the MEA, the maintenance technician and Unger would need to resolve the issue. In one instance, maintenance technician Jim Bankhead argued with the MEA on duty. At that time Unger advised Bankhead that the MEAs are Unger's representative and that Bankhead was to do the work that the MEA laid out for him.

Maintenance technicians fill in for the MEA when the MEA is on vacation and during those times they will change assignments without further approval. Maintenance technicians also do this on the off shifts when neither the MEA nor the team leader is present. In addition, the record indicates that Unger has advised the maintenance technicians who serve as shift mechanics that they have pre-approval to call out extra help without contacting an MEA. The employee assigned to be the shift mechanic carries a radio.⁴⁵ With respect to keeping time records of maintenance mechanics, the MEAs have a log on which to record the work order number, a description of the work to be performed and the time spent on the order. However, Team Leader Unger, not the MEA, approves the time records which are used for payroll purposes. With respect to calling off, it appears from the record that the maintenance technicians are required to call off to their team leader, but some also call the MEA, either as a courtesy or because they feel they should do so.

The MEAs are part of the department rotation for overtime purposes. When they are working overtime, the MEAs perform only mechanical maintenance work. All of the maintenance technicians including the MEAs record their own time on a timecard for pay purposes. These timecards are collected by Unger.

⁴⁵ While working as a shift mechanic the maintenance technicians receive a 10 percent increase in pay, which amounts to an increase of about \$2.50 per hour.

With respect to the ability to recommend discipline, the record contains evidence of one incident of MEA involvement in the discipline of two maintenance technicians. On July 7, 2004, Team Leader Lynn Unger issued oral reminders to maintenance technicians Fred Parenti and Gary Luckey under the Employer's Conduct and Positive Corrective Discipline policy. Both Parenti and Luckey testified that when Unger issued them the discipline, Unger told each of them that MEA Dave Trickett was "appalled" at their lack of progress on their assignments on June 30, 2004. Unger stated that he did not recall making this statement to Parenti and Luckey. Unger recalls telling the two individuals what he personally observed and that he was getting information from Trickett and others. The record establishes that the information regarding the progress of the job was reported to Unger by an OEA. Unger then went to the area and personally observed Parenti.⁴⁶ Moreover, according to Unger, Trickett did not report the incident and he had no role in the decision to discipline Parenti and Luckey, nor could he, inasmuch as MEAs have no authority to discipline employees or influence the process.

Parenti also testified that he was disciplined more than five years ago by the then-team leader for failing to fill out an incident report for an eye injury even though Parenti orally reported the incident to MEA Trickett. Parenti testified that he did not believe Trickett recommended that Parenti be disciplined in that instance. However, Parenti felt that Trickett could have prevented the discipline by communicating Parenti's oral report of the work-related injury.

There is also testimony in the record that MEAs scold or "chew out" technicians. However, Unger testified that he is unaware of such activity and stated that, if it occurs, it is outside the MEAs' realm of authority. Unger acknowledged that MEAs can approach any employee to ask questions about the process or the length of time needed to complete a task.

The record contains a document created by Team Leader Unger entitled "Maintenance Group Expectations". The document sets forth Unger's expectations under the headings of

⁴⁶ Maintenance Technician Luckey acknowledged that he saw Unger observe Parenti. Luckey stated that he does not know if Unger also observed him.

starting times, breaks/lunch, phone calls, job ending time, meetings, working and being candid. Two of the 23 expectations under those headings refer to the maintenance technicians' responsibility to locate and communicate with the MEA to continue assignments or to obtain additional assignments.⁴⁷

The record herein establishes that the OEAs and MEAs provide routine direction to employees in the completion of jobs. While OEAs perform varying amounts of hands-on production work, they all work on the production floor for substantial periods of time. The MEAs all perform significant amounts of maintenance work with the other maintenance technicians.

With respect to the contention that OEAs and MEAs assign employees and responsibly direct them, the record reveals that the OEAs and MEAs must follow the production schedule prepared by Yost. The Petitioner cites Custom Bronze & Aluminum Corp., 197 NLRB 397 (1972) in its brief in support the contention that OEAs and MEAs responsibly direct employees. However, the employee found to be a supervisor in that case was solely responsible for the work of the shop. Here, OEAs and MEAs are not solely responsible for the work in the plant. Rather, they report to and work on the same shift as team leaders, who are stipulated to be supervisors within the meaning of the Act. In addition, any changes to the production schedule are directed by higher management and are then communicated to technicians by the OEAs and MEAs. In Ryder Truck Rental, Inc., 326 NLRB 1386 (1998), the Board said that the assignment of work by area of expertise does not involve the exercise of independent judgment when carried out according to instructions of management. In that case, as here, the disputed technician in charge ("TIC") followed a planning sheet created by higher management in assigning work. When presented with an unanticipated job that had to be handled, the TIC chose a technician to perform the work based on the employer's prior assessment of the

⁴⁷ The document is dated February 1999 and thus originated before the Employer acquired the facility. However, according to the undisputed testimony of Maintenance Technician Jack Starsick, the document continues to be posted on the bulletin board in the maintenance area.

employee's special skills or training. See also, SDI Operating Partners, LP, 321 NLRB 111 (1996). In this case, the production and maintenance technicians can perform nearly all of the required tasks. To the extent that a specialized task, such as welding or electrical work, is required, the abilities of the employees to perform such duties are well known.

If overtime is needed on a particular job, team leaders or higher management authorize the OEAs and MEAs to solicit employees to work overtime by utilizing the established call-out procedure. The assignment of work pursuant to plans and schedules developed by higher management does not establish supervisory status. Arlington Electric, Inc., 332 NLRB 845 (2000).

With respect to the effective recommendation of discipline, the record establishes that OEAs and MEAs have no authority to discipline employees and that their role is limited to reporting incidents to their team leaders. Finally, any perception that OEA and MEAs are part of higher management appears to be based on the fact that OEAs and MEAs are more experienced and/or more highly trained than other employees. The Board and the courts have recognized that an employee does not become a supervisor merely because he has greater skills and job responsibilities than his fellow employees. Byers Engineering Corp., 324 NLRB 740, 741 (1997). Moreover, employees' perception of supervisory status constitutes secondary indicia which does not itself establish supervisory status. Ryder Truck Rental, supra.

In this case, the OEAS and MEAs do not determine the technicians' stations and daily duties. Rather, the technicians on each shift have determined for themselves a system of rotating the duties which must be fulfilled on each shift. OEAs and MEAs do assign technicians to perform unanticipated work which must be handled. However, there is no evidence that this assignment of work or direction of employees is performed with the requisite discretionary independent judgment.

Moreover, the OEAs and MEAs have no authority over employee scheduling for vacations, time off or any other purpose. Similarly, the OEAs and MEAs have no authority to discipline employees. All of these functions are handled by the team leaders.

The OEAs and MEAS are hourly paid and have the same benefit package as the non-supervisory employees, with the exception that they receive a higher wage rate. The OEAs' wage rate is approximately 20 percent higher than the wage rate of the production technicians. The MEAs' wage rate is approximately 13 percent higher than the wage rate of maintenance technicians. The record indicates that OEAs and MEAs are more experienced and are responsible for troubleshooting and otherwise facilitating the production process. They are also responsible for adherence to certain regulations and policies so that the work can be performed. While these factors tend to explain their higher rate of pay, the OEAs' and MEAs' responsibility in these areas is essentially of a routine nature involving the application of established rules and procedures.

Finally, the fact that the OEAs and MEAs substitute for team leaders when they are sick or on vacation or otherwise temporarily absent from the facility is insufficient to establish supervisory authority inasmuch as any performance of supervisory duties is irregular and sporadic. Quality Chemical, Inc., 324 NLRB 328 (1997). Moreover, the Petitioner did not establish that while substituting, the OEAs and MEAs possess and exercise the supervisory authorities which the parties stipulated the teams leaders possess and exercise.

Based on the above and the record as a whole, the burden of proving supervisory status, which rests with the Petitioner, has not been met. Accordingly, I find that the OEAs and MEAs are not supervisors within the meaning of the Act, and I shall include them in the unit found appropriate herein.

III. OTHER PLACEMENT ISSUES

A. Purchasing

The Petitioner seeks to exclude Purchasing Coordinator Cheryl Gay Dean and Assistant Buyer Linda McCartney from the unit found appropriate herein on the basis that they are office clerical and/or technical employees who lack a community of interest with the petitioned-for employees. Dean and McCartney are administratively classified as Morgantown site staff. Dean reports to Buyer Procurement Mike Dawley. McCartney reports to Site Manager Kief Hess.

1. Purchasing Coordinator

Purchasing Coordinator Cheryl Gay Dean's office is located in Building 175 between the stores area and the maintenance area.⁴⁸ Dean works from 8:15 a.m. to 5:15 p.m. on weekdays. There are no minimum educational requirements or specialized training needed to perform Dean's job.

Dean places orders for maintenance, repair and operating (MRO) items which are necessary to maintain or repair equipment at the facility. Dean manages the requisitions and purchase orders for these items. On average, Dean processes about 100 purchase orders and requisitions each week. Dean determines which items should be purchased based on predetermined inventory level.⁴⁹ In fact, the SAP program tracks the inventory levels and produces an internal requisition when a particular item reaches its minimum. However, Dean

⁴⁸ As noted herein, maintenance technicians are assigned to work in locations throughout the plant. When they are present in Building 175, they are in the downstairs lunchroom or the upstairs shop. The record contains no evidence that Dean utilizes either of these areas.

⁴⁹ Higher management sets the minimum and maximum inventory levels. Warehouse technician Rita Ballone inputs the minimum and maximum inventory levels for each item into the system. Ballone works in Building 175, in the section designated as the stores area where spare parts are located.

must obtain approval to purchase the item and actually place the orders with a vendor. In addition, Dean occasionally utilizes an Employer-issued credit card for certain purchases.⁵⁰

Dean's interaction with employees involved in the production process occurs sporadically. Occasionally, Dean will discuss the use of high-dollar items with employees using those items. The Employer contends that Dean also conducts requisition training with employees. The only instance of such training occurred shortly before the hearing, where Dean trained maintenance technician Jim Bankhead on requisitions.⁵¹ The record indicates that occasionally maintenance technicians come to Dean's office to inquire about a particular item.⁵² Likewise, Dean enters the shop approximately once a week to obtain information. In addition, Dean has telephone contact with employees involved in the production process.⁵³ Finally, once each month Dean leaves Building 175 for one-half to a full day. On these occasions she is performing inventory functions on "packaging items." The record indicates that if Dean cannot find the item she is looking for she will ask employees in the area to help her locate the item.

2. Assistant Buyer

Linda McCartney has been the assistant buyer at the facility for the last 12 years. Prior to assuming this position she worked as an administrative assistant. As assistant buyer, McCartney purchases all of the raw materials used in the production process and acts as the liaison between the plant and the Employer's vendors. McCartney reviews the production

⁵⁰ Dean may not use the credit card to purchase raw materials or any item with a material number.

⁵¹ The record also establishes that approximately twice per month Dean requests that Bankhead review and confirm certain invoices.

⁵² Dean estimated that such visits occur once per day or once every few days.

⁵³ Dean records such contacts on steno pads, one of which is contained in the record. According to the Employer, Dean's contacts from November 2005 through February 2006, during the period covered by the steno pad, are not necessarily limited to the recorded entries. In any event, from November 2005 through February 2006, in the period of time covered by the steno pad, Dean recorded one contact with a PMHA technician, 10 contacts with MEAs, nine contacts with mechanical maintenance technicians, 17 contacts with OEAs, three contacts with E and I technicians and one contact with a production technician.

schedule, blend schedule and inventory list every day to determine the facility's ordering needs. She also consults on a daily basis with the OEAs in each area to determine when they will need each of the materials. McCartney receives an inventory schedule each day.⁵⁴ McCartney performs these functions from her office on the main floor of the Administration building.⁵⁵ The record indicates that McCartney enters the plant only one hour per month when performing the safety observations each month.⁵⁶ McCartney works from 8:00 a.m. to 5:00 p.m. on weekdays with a one hour unpaid lunch during which she can leave the facility.

In addition to the OEAs, McCartney has daily or almost daily contact with Yost and Romito. Before Yost changes the production schedule, he will call McCartney to ensure that a particular raw material can be delivered in time for the additional production. Romito tracks incoming railcars carrying raw materials and relays this information to McCartney.

When an expected raw material has not arrived or there are problems with the offloading of raw material from a carrier, production employees will alert McCartney. This occurs approximately once each week.

A substantial portion of McCartney's time is spent speaking with vendors regarding supply problems and ordering issues. McCartney attends meetings with new vendors at which Site Manager Hess, representatives from the technical area, and some of the team leaders and OEAs are also present.

McCartney has an Employer-issued credit card which she uses when filling in for Cheryl Gay Dean. McCartney does not use the credit card in her position as assistant buyer because

⁵⁴ Currently there is no computer program in use to show the inventory levels of raw materials.

⁵⁵ The payroll office and the offices of Site Manager Hess and the Human Resources Manager are in close proximity to McCartney's office.

⁵⁶ The record establishes that part of the Employer's safety program requires all employees to participate in four safety observations, called "pause" observations, each month. This involves watching four employees perform their jobs for 15 minutes. The observer then completes a form which is submitted to the Employer. McCartney prefers to perform all four of the required monthly safety observations in one day.

raw materials cannot be purchased on a credit card. There are no minimum educational requirements or specialized training needed to perform McCartney's job.

B. Logistics

The Logistics Group is comprised of Transportation Services Coordinator Janet Romito, Production Services Coordinator Kay Ringer, Materials Control Coordinator Dave Yost, Warehouse Team Leader Dave Lofstead and four warehouse technicians.⁵⁷ The Employer contends that Romito, Ringer and Yost should be included in the unit found appropriate herein. The Petitioner contends that these employees are office clerical and/or technical employees who do not share a community of interest with the petitioned-for employees. Romito, Ringer and Yost, like Lofstead and the warehouse technicians, report to Quality Lab and Logistics Manager Charles "Chip" White.⁵⁸ All three of these employees have offices on the lower floor of the Administration building.⁵⁹ These employees interact daily with each other regarding the production schedule as their duties are affected by that schedule. Romito, Ringer and Yost fill in for each other when needed.⁶⁰ None of the three disputed positions require special courses or specialized training.

1. Transportation Services Coordinator

Janet Romito is responsible for export shipments to locations outside of the United States and for railcar shipments and arrivals to the facility. Romito communicates with rail companies to schedule the arrival and departure of railcars. She also schedules trucks for the pickup of the Employer's product for delivery. Romito spends approximately 85 percent of her

⁵⁷ The parties stipulated that warehouse technicians are included in the unit.

⁵⁸ White also supervises the senior lab technicians, lab technicians and chemical assistants, all of whom the parties stipulated are included in the unit.

⁵⁹ The record indicates that the three were moved from Warehouse No. 3 to the Administration building two to three years ago when the Employer needed additional warehouse space. The Administration building is about a one-minute walk from the warehouse.

⁶⁰ Romito, Ringer and Yost each have between four to six weeks of vacation per year.

time in her office. The balance of her time is spent in either the warehouse or the lab. Approximately two times each week, Romito must ship chemical samples to the Employer's customers. In such instances, Romito calls a production technician to ask that he pull a sample of the particular chemical and deliver it to the sample retain room in the lab. The record indicates that a lab technician must analyze the material before Romito can send it to the customer. Once the lab analysis is complete, Romito will then go to the lab⁶¹ where she physically packages and ships the sample to the customer.

Romito prints pick tickets generated on SAP which identifies for the warehouse technicians which lots of product to pick for each particular shipment, the type of packaging and any special delivery requirements. Twice per day, Romito delivers the pick tickets to the warehouse or one of the warehouse technicians comes to Romito's work area to get the pick tickets prepared by Romito.

2. Production Services Coordinator

Kay Ringer schedules trucks for domestic shipments and prepares product labels.⁶² Ringer also utilizes the SAP system in her work. Ringer accesses all open orders and open deliveries on SAP in her work of scheduling trucks for arrival at the facility.

Ringer prepares a tank truck schedule, which is then posted on the Employer's intranet and is used by production technicians or the OEAs in planning for the loading of trucks. If a customer has a specialized request or requirement, a pink ticket is generated on SAP.

Ringer inputs the required information for each label⁶³ and prints the labels in her office.⁶⁴ A warehouse technician will retrieve the labels from a slot outside Ringer's office or, at

⁶¹ When entering the lab, Romito wears a lab coat, safety glasses and steel-toed shoes.

⁶² Most labels are larger than an 8 and 1/2 by 11 inch sheet of paper.

⁶³ Depending on the product, Ringer may be responsible to include information required by the Employer's headquarters office and certain federal agencies including the Department of Transportation on the label.

times, Ringer will deliver the labels to the warehouse. Occasionally, either a production technician, OEA or team leader will call Ringer when additional labels are needed. Usually, Ringer is already aware of the need for additional labels because she monitors the SAP system.

Ringer spends 85 to 90 percent of her time in the office. It appears that the only times Ringer leaves her office is when she is performing a pause safety observation, delivering labels or when she is interacting with or filling in for Romito.

3. Materials Control Coordinator

Dave Yost prepares the production schedules for liquids and solids production at the North plant. Yost decides the priority of production after reviewing the customer demands which are listed in SAP. Yost updates the production schedules two to three times per week.

Yost spends 90 percent of his time in his office. The rest of his time is spent consulting with Romito and Ringer and individuals directly involved in the production process. In this regard, the record establishes that Yost interacts regularly with the OEAs who come to Yost's office with production issues. The record indicates that Yost speaks with PMHA technicians by telephone about once per week. Yost also has daily telephone conversations with production technicians,⁶⁵ and he speaks with lab technicians by telephone approximately two to three times per week.

The production schedules prepared by Yost are posted on the Employer's intranet so that they can be accessed by all employees involved in the production process. The schedule informs employees of the work they are to perform on any given day.⁶⁶ It appears that on weekdays, OEAs will access the schedule and will orally pass on the necessary information.

⁶⁴ The Employer has an additional label printer at the South Plant control room. The record does not reflect who prints the labels at that site.

⁶⁵ This telephone contact appears somewhat more limited than Yost's contacts with OEAs because the production technicians generally first consult with their OEA as to production issues.

⁶⁶ The production schedule lists the run number, ship date, requisition number, quantity, product name, customer and type of packaging required.

On off shifts and weekends, production technicians are more likely to access the production schedule themselves.

C. Process Control

The Employer's process control group is headed by Process Control Team Leader John Snodgrass. Reporting to Snodgrass are Drafting Specialist Robert Baker, Process Control Coordinator Dennis Nelson, and Process Control Technician Dennis Smith.⁶⁷ Snodgrass and his reports have offices on the upper floor of the Facilities building.

1. Drafting Specialist

Drafting Specialist Robert Baker prepares and maintains the plant drawings, participates in the excavation permit approval system and is the contact person for questions regarding the usage of the Employer's Electronic Document Management System ("EDMS"). Baker spends approximately 90 percent of his time in his office which is located in the Facilities building. Baker wears business casual clothing to work and has a one hour lunch period during which he leaves the plant. Baker normally works from 7:00 a.m. to 4:00 p.m. on weekdays. Baker's position does not require any specialized course of training. Baker has been trained to use the AutoCAD system⁶⁸ and he has considerable work experience.

With respect to preparing and maintaining the plant drawings, Baker amends the existing drawings to correct any discrepancies between the drawing and the actual equipment. If a new piece of equipment is going to be built, the MEA, OEA, E and I technician or engineer will tell Baker what they want him to draw.

Baker has contact with production and maintenance employees when a problem arises due to an omission from a drawing or when maintenance technicians are planning changes which must be recorded on the drawing. In such instances, Baker will go into the plant to

⁶⁷ As noted above, the two process control positions are encompassed within the title of IA technician.

⁶⁸ The Employer has computer drafting software which includes training materials.

examine the equipment. Depending on the project, Baker can be present in the plant for periods of time ranging from 30 minutes to a whole day or, if there is no ongoing project, he may have no reason to enter the plant for one to two weeks at a time.

When creating drawings, Baker deals most frequently with the engineers, MEAs, or OEAs at the facility. However, occasionally maintenance technicians or E and I technicians may be working on a project which will require a drawing by Baker. In these instances, Baker meets with the employees involved in such projects to document what they want. One example described in the record occurred during the week before the hearing. Baker worked with MEA Dave McDilda to draw an air compressor system for the North plant. The record reveals that Baker had previously worked with MEA Blaine Bolyard on a similar system at the South plant.

An excavation at the facility requires documentation to obtain the necessary approvals. When any excavation is planned, Baker gathers all relevant drawings to review them for interferences with utilities. Then, he must sign the permit to verify that he has reviewed the drawings. During the excavation permit process, Baker interacts with OEAs, MEAs, production technicians and maintenance technicians. The record reveals that Baker can be involved in up to five excavation permit processes in a single day or can go as long as six weeks without being involved in such a process.

The EDMS is the system by which the Employer keeps control copies, standard operating procedures, HECs, Process and Implementation ("P and ID") diagrams and electrical diagrams. Baker is responsible for maintaining and composing the P and ID documents. He has also composed wiring and motor diagrams. Baker issues and reissues identification numbers and passwords to new and existing employees so that they have access to the EDMS. When an employee has difficulty in logging on or finding a particular document, Baker provides assistance. Baker also trains employees on the EDMS.⁶⁹

⁶⁹ Baker testified that he trains production, maintenance and E and I technicians more frequently than engineers and other employees who have technical backgrounds.

Baker is available to work overtime on a volunteer basis in material handling. The record indicates that because of a lower rate of production, the last time Baker worked overtime in this manner was one to two years ago. In these situations and in any situation where Baker enters the plant, Baker must wear the same safety equipment as the production and maintenance technicians.

2. IA Technicians

The IA technicians are responsible for monitoring the production process primarily from IA screens.⁷⁰ In this regard, they respond to problems with the control system. Both the process control coordinator and the process control technician receive their assignments from team leader Snodgrass. Both answer phone calls from the production floor and handle day-to-day troubleshooting issues pertaining to the IA system. In doing so, the process control coordinator and the process control technician monitor readouts to ensure that the system is performing within predetermined specifications. Both the process control coordinator and the process control technician spend 80 to 90 percent of their time in their offices which are located in the Facilities building. The balance of their time is spent on the production floor. The IA technicians both work four 10 hour days per week.⁷¹ Neither position requires any specialized training or the completion of specialized courses. The process control coordinator and the process control technician bid on their current positions from the positions of PMHA technician and E and I technician, respectively.

a. Process Control Technician

Process Control Technician Russ Smith monitors the hardware system for any problem, performs troubleshooting for operators, answers questions from E and I technicians with respect to preventative maintenance and assists with the implementation of any improvement project.

⁷⁰ The record reflects that the Employer has utilized IA screens for the past 10 to 15 years.

⁷¹ The IA technicians alternate working Monday through Thursday one week followed by a week of working Tuesday through Friday. In this way at least one of them is present at the facility every weekday.

Smith programs helpful warnings into the system to alert the technicians that an error is occurring. Smith is required to handle any electrical and instrumentation issues if an E and I technician is unavailable.

The record indicates that Smith has daily communication on operational issues with production technicians, maintenance technicians and/or E and I technicians. The record indicates that when creating the process control technician position, one of the qualifications was that the process control technician be able to fill in as an E and I technician.⁷² Smith is a licensed electrician although this is not a requirement of his position.

Smith's office is equipped with the same IA screens as are located in the control rooms on the production floor. Smith describes his work on the IA screens as performing maintenance on the robot that is the plant. Employees call Smith to ask him to watch the same process that they are viewing in the control room. In this way, Smith helps to determine the nature of the problem and he will assist in repairing the problem.

Smith begins his day by performing a system check. If he discovers a problem, he immediately calls the technician who is running the particular unit to discuss the matter. From his office, Smith can access the machine virtually to work on the equipment. For instance, from his office Smith can close a valve on equipment on the production floor if that is necessary to alleviate the error. Smith also has the capability to override the technician operating the equipment, but has never done so unless expressly asked by the technician. Smith relies on the technician's expertise in operating the equipment and, therefore, will not independently override the technician.

Smith also maintains the system hardware. Smith reviews a screen each day which provides a detailed account of the health of each machine. If he encounters a problem, he first

⁷² Smith is the first employee in the process control technician position. When working on the production floor Smith wears a uniform. Smith also maintains a toolbox at the facility.

attempts to resolve it virtually. If the problem cannot be resolved in this manner, Smith enters the plant to work on the machine.

In performing his work, Smith has daily contact with the production technicians, E and I technicians, OEAs, team leaders and engineers. Much of this contact is by telephone or radio. For example, E and I technicians collaborate with Smith on preventative maintenance work such as when an instrument must be taken off line or when equipment must be installed.

b. Process Control Coordinator

Process Control Coordinator Dennis Nelson also monitors the IA screens and troubleshoots with production technicians. Nelson is primarily involved with software issues, although he, like Smith, can address hardware issues.⁷³ Nelson also implements changes to the software system, which have been ordered by one of the engineers. Like Smith, Nelson has the ability to remotely work with the equipment. For instance, from his office Nelson can change a control on the production floor equipment so that it meets the Employer's standard.⁷⁴

Before August 2005, Nelson was physically out of his office about 25 percent of the time working on the production floor or interacting with production technicians in the control rooms. The balance of his time was spent working with technical issues from his office.

The record establishes that since August 2005, Nelson has been in charge of the Employer's management of change ("MOC") procedure. The MOC procedure is essentially a safety procedure which requires that any change in the plant must be documented. The documentation includes a request form⁷⁵ and approvals for the change throughout the process.

⁷³ On the morning of his testimony in this matter, Nelson worked on a failed hard drive on the computer in the K-9 control room.

⁷⁴ To change the standard, the management of change process must be complied with.

⁷⁵ The MOC request forms are generally submitted by engineers and team leaders. Production technician Tim Fetty, a witness called by the Petitioner, testified that he has sometimes spoken directly with an IA technician by telephone. However, on most occasions when Fetty has a problem that requires attention from the IA technician he will alert the OEA, especially if the problem requires the initiation of the management of change procedure.

In this way, the Employer is assured that every change has been reviewed by many individuals. Nelson stores and tracks the completed MOCs.⁷⁶ The MOC procedure has consumed much of Nelson's time since August 2005, but as of the time of the hearing the backlog of work involved with the procedure was almost complete. In any event, between August 2005 and the time of the hearing, much of Nelson's interaction with other employees has been limited to daily telephone contact with OEAs and production technicians.⁷⁷ However, the record indicates that Nelson has had occasion to assist production technicians within the last six months.⁷⁸

Since becoming the process control coordinator approximately four and one-half years ago, Nelson has filled in as a PMHA technician one or two times. This occurred several years ago.

The Petitioner's contention that any of the above-listed employees are technical employees is misplaced. The Board has long applied the criteria that "... those held to be technical employees are employees who do not meet the strict requirements of the term 'professional employee' as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses" (footnote omitted). Litton Industries of Maryland, Incorporated, 125 NLRB 722, 724-725 (1959). See also Vapor Corporation, 242 NLRB 776 (1979). None of the employees at issue herein meet these criteria, but even if they did they would not necessarily be excluded from the unit on that basis, where the petitioned-for unit arguably includes employees who might meet the definition of technical

⁷⁶ Nelson ensures that all required signatures are obtained, training is completed and that drawings are updated, if necessary.

⁷⁷ One example of such contacts described in the record was a telephone call from a production technician in the K-9 area who called Nelson because he was unable to view a particular display on a screen.

⁷⁸ Production technician Danny Strakal, a witness called by the Petitioner, acknowledged that he has had contact with Nelson, and that when working on dayshift during the last six months he has seen Nelson once per day. In those instances, Nelson has asked Strakal if he has had any problems with the process and has worked with Strakal on one problem.

employee.⁷⁹ In addition, it is well established that if technical employees otherwise share a community of interest with production and maintenance employees, they may be included in the same unit. Dynalectron Corporation, 231 NLRB 1147, 1148 (1977); Airesearch Manufacturing Company of Arizona, 137 NLRB 632, 635-636 (1962); The Sheffield Corporation, 134 NLRB 1101 (1961).

The Board has traditionally included plant clerical employees in a production and maintenance unit and has excluded office clerical employees from production and maintenance units. Caesar's Tahoe, 337 NLRB 1096, 1100 (2002), and cases cited therein. In determining whether an employee should be considered an office clerical employee or a plant clerical, it must be determined whether the employee's functions are closely associated with the production process. Hamilton Halter Co., 270 NLRB 331 (1984). As the Board pointed out in Hamilton Halter, the line between plant clerical and office clerical is not always easily distinguishable. In this regard, the Board has long held that the distinction between office and plant clericals is rooted in community of interest concepts. Mitchellace, Inc., 314 NLRB 536 (1994).

In determining whether an employee is a plant or office clerical, the Board has additionally considered the location where the individual performs his or her work and the amount of time the employee spends performing other duties. In Container Research Corp., 188 NLRB 586, 587 (1971), the Board determined the status of several clerical positions. Material planners who scheduled production and usage of materials were found to be plant clericals because the position required contact with the production and maintenance employees and the material planners received comparable salaries and fringe benefits and were subject to the same supervisors. Likewise, the expeditors and production control coordinators at issue,

⁷⁹ At the hearing, the Petitioner stipulated to the inclusion of chemical assistants, senior laboratory technicians and laboratory technicians, which positions may be technical in nature. In light of the lack of clarity in the record, I am unable to determine that the Petitioner in fact seeks the exclusion of all technical employees.

who spent “95 percent” and “virtually all” of their time on the shop floor, were determined to be plant clericals. However, in determining that the estimator was an office clerical employee, the Board noted that the estimator spent 90 percent of his time in the general office area away from the production floor, and entered the floor only when necessary to get data. Notably, contract coordinators, who spent 15 percent of their time typing and the balance of their time securing and maintaining various manufacturing and production records and shipping logs were also found to be office clericals. The Board so found because their contacts with the production and maintenance employees occurred primarily in the office area away from the production floor, and because the contract coordinators worked different hours and their pay was not docked when they were absent.

In more recent cases involving the office versus plant clerical distinction, the Board has continued to pay particular attention to the amount of time the disputed clericals spent interacting with and/or interchanging with production and maintenance employees. In Avecor, Inc., 296 NLRB 727 (1989), an order entry clerk and a lab secretary were at issue. The order entry clerk’s duties involved receiving customer orders by telephone, preparing paperwork for those orders utilizing normal office equipment, and generating shipping paperwork. The order entry clerk provided production information to the production manager and shipping information to the shipping manager. The Board found the order entry clerk to be an office clerical employee, noting that her work location was in the main office where office clericals were located and that she was not subject to the overtime requirements which affected most of the unit employees. The lab secretary at issue in Avecor worked out of the lab manager’s office and produced paperwork on the lab and production reports. This employee was supervised by the lab manager and spent 25 percent of her time in direct contact with the lab or production employees. At work, she utilized a computer and regular office equipment. Again, based on the primary location of the lab secretary’s work and her general office type work, she was found to be an office clerical employee. Particularly noteworthy was that neither the data entry clerk nor the lab secretary performed any production work, even on a sporadic or part-time basis.

The Board reached this conclusion notwithstanding that the paperwork they generated related to production work.

In Virginia Manufacturing Company, 311 NLRB 992 (1993), the Board found that the production control clerk, who reported to the plant superintendent and whose primary job function was compiling production information and keeping track of the raw materials used in the production process, was an office clerical employee. The Board noted that this clerk spent 60 percent of his work time in an office housed in the production area, and 40 percent of his time on the production floor obtaining information for his reports. Even though the production control clerk's monitoring placed him in daily contact with the unit employees, the Board found that these duties were incidental to his primary function of preparing the daily reports, the preparation of which occupied the majority of his working time. Likewise, in Cook Composites and Polymers Co., 313 NLRB 1105 (1994), the Board upheld the finding that manufacturing data entry operators were office clerical employees. Their essential job duty was to enter data from batch tickets into the computer system. The operators were also responsible for generating address labels for shipping, assigning freight carriers, and filing pick tickets, packaging slips and bills of lading. Although the data entry operators received the same starting pay, identical benefits and safety training as unit employees, the Board found them to be office clericals because they had minimal contact with other unit employees. Those contracts were limited to occasional walking into the areas where unit employees worked to retrieve batch tickets or shipping documents. The data entry operators directed problems with batch tickets to the inventory manager. In addition, the data entry operators did not wear employer-provided uniforms.

As to the purchasing employees, based on the record evidence, I find that purchasing coordinator Cheryl Gay Dean and Assistant Buyer Linda McCartney are office clerical, rather than plant clerical employees, and that they do not share a community of interest with the petitioned-for employees sufficient to require their inclusion in the unit. In this regard, the record establishes that Dean and McCartney are separately located in an enclosed office in Building 175 and on the upper

floor of the Administration building, respectively. Both Dean and McCartney are supervised by Dawley and Hess and not by the team leaders who supervise the petitioned-for employees.

While it appears that Dean spends a minimal amount of time on the production floor at the facility, her duties there appear to be limited to taking inventory of package items. McCartney spends no time on the production floor, except when performing safety observations which require her presence in the plant, for, at most, one hour per month. The record contains no evidence that either Dean or McCartney perform actual production work. Neither wears company-provided uniforms nor work clothes. Like the employees found to be office clerical employees in Container Research, Avecor, Virginia Manufacturing, and Cook Composites and Polymers, they are engaged in job tasks and duties which are office clerical rather than plant clerical in nature.⁸⁰

As to the placement of the three logistics employees at issue in this proceeding, I have determined that they are plant clerical employees who share a community of interest with the employees in the unit found appropriate herein. Materials Control Coordinator Yost determines what products will be produced and when. His work in preparing the production schedules requires communication with OEAs, production technicians and warehouse technicians. Although Yost does not go to the production floor, OEAs frequently come to his office. Yost's contact with other employees appears to be primarily through telephone calls. On a daily basis, Yost speaks with the warehouse technicians about upcoming shipments.

Transportation Services Coordinator Romito generates pick tickets for warehouse employees twice each day. She also works in the lab when she needs to ship a sample to a

⁸⁰ The cases relied on by the Employer in its brief do not compel a different result. In Syracuse University, 325 NLRB 162 (1997), the Parking Service clericals were included, as requested by the petitioner, in an overall unit of parking lot attendants, parking enforcement officers and parking control officers. In that case the parking service clericals spent approximately 25 percent of their time in the office engaging in work communications with field staff and the record established regular and frequent interchange of work duties among clerical and field employees. In Wm R. Whittaker Co., Ltd., 117 NLRB 339 (1957), the buyers-raw materials had desks in factory areas and frequently contacted employees to check on purchasing needs. In Florida Tile Industries, Inc., 130 NLRB 897 (1961), the inventory control clerk worked in a partitioned area of the sales warehouse, was supervised by the warehouse supervisor and had direct contact with other warehouse employees and plant employees.

customer. Ten to fifteen percent of her work time is spent in the warehouse or the lab performing her duties.

Production Services Coordinator Kay Ringer prepares the tank truck schedules which are used by production technicians to plan when truck loading duties will occur during their shift. Ringer is regularly called by OEAs and production technicians regarding late arriving trucks. She also has contact with warehouse technicians regarding the drum labels she prepares.

Romito, Ringer and Yost all wear business casual clothing to work. They all work on weekdays from 7:00 a.m. to 3:30 p.m. or 7:00 a.m. to 4:00 p.m. Romito and Yost have a one-half hour unpaid lunch period during which they can leave the facility. Ringer works a nine hour day and has a one-hour unpaid lunch period during which she can leave the facility. I note that Romito, Ringer and Yost work the same hours as the warehouse technicians that the parties have stipulated are to be included in the unit. Quality Lab and Logistics Manager Chip White, who supervises the logistics clericals, also supervises Team Leader Dave Lofstead, who in turn directly supervises the warehouse technicians. Finally, the positions occupied by Romito, Ringer and Yost require no particular education or specialized skill, and they receive salaries comparable to employees in undisputed unit classifications with similar skill levels.

Based on the record, I find that Romito, Ringer and Yost are plant clerical employees who are appropriately included in the bargaining unit inasmuch as their functions and duties are integral to and interrelated with the Employer's production process. See Columbia Textile Services, 293 NLRB 1034 (1989).

With respect to the process control employees, I find that Drafting Specialist Robert Baker does not share a sufficient community of interest with the petitioned-for employees so as to require his inclusion in the unit. I further find that the work performed by IA Technicians Dennis Nelson and Russ Smith is directly related to the production process and I have included them in the unit.

The Board traditionally excludes draftsmen from production and maintenance units where, as here, they are separately supervised, work in a separate location and have minimal contact with

employees. Southeastern Industrial Services, Inc., 342 NLRB No. 22 (2004), citing Container Research Corp., supra; Capitol Temptrol Corp., 243 NLRB 575 (1979) and Maryland Cup Corp., 171 NLRB 367 (1968).

Baker is supervised by Team Leader Snodgrass and spends the vast majority of his time in an office in the Facilities building. Baker performs specialized tasks which are different from those performed by the employees in unit petitioned for herein except that on one occasion Baker worked in material handling, on an overtime basis, more than one year ago. Although Baker spends a small percentage of his time communicating with MEAs, OEAs and production and maintenance technicians, this does not create such a substantial community of interest with the petitioned for employees as to require his inclusion in the unit. I shall, therefore, exclude him from the unit.

IA technicians Nelson and Smith maintain the Intelligent Automation system which runs the production process. Their jobs require daily interaction with both the production technicians and E and I technicians to troubleshoot and fix problems. The record reflects that as part of their duties Nelson and Smith work on the production system remotely from their offices as well as in the plant where they work side-by-side with operators in control rooms. Accordingly, I shall include the IA technicians in a unit found appropriate herein.

IV. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance, employees, including production, maintenance, PMHA, warehouse, environmental, E and I, PASC and IA technicians, chemical assistants, senior laboratory and laboratory technicians, material control coordinator, transportation services coordinator, production services coordinator, operational engineering assistants and maintenance engineering assistants employed by the Employer at its Morgantown, West Virginia facility; excluding the drafting specialist, office clerical employees, including the purchasing coordinator and assistant buyer, and guards, professional employees and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two Chatham Center, Suite 510, 112 Washington Place, Pittsburgh, PA 15219, on or before **April 18, 2006**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.⁸¹ This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **April 25, 2006**. The request may **not** be filed by facsimile.

Dated: April 11, 2006

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Two Chatham Center, Suite 510
112 Washington Place
Pittsburgh, PA 15219

Classification Index

177-8560
440-1760-1500
440-1760-2420
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⁸¹ A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlrb.gov, under "E-Gov."